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National Center for the Study of Collective Bargaining in Higher Education and the Professions

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The National Center for the Study of Collective Bargaining in Higher Education

Newsletter

Vol. 2 No. 4

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T H I S I S S U E

The National Center reports in this issue of the Newsletter on the results of two surveys of the contracts on file in the Elias Lieberman Memorial Library.

Retrenchment Clauses were found in 80 of the 158 contracts and various details are reported in the first article (pp. 2-9). Questions raised by a reading of the clauses, how seniority is used in the contracts, and other aspects of the clauses are detailed.

The second article reports on the Non-discrimination Clauses which were found in 88 of 148 contracts reviewed (pp. 8-11). The Non-discrimination data is broken down by four-year and two-year contract clauses.

FUTURE PLANS

The National Center has several projects nearing completion:

- 1) a Mock Bargaining Workshop
October 7-8 in New York City;
- 2) publication of an Other Than Faculty
Bargaining bibliography which will
be available later this fall;
- 3) completion of the search capability
for the full-text retrieval of in-
formation from the college contracts
within the next three weeks;
- 4) distribution of the Proceedings
volume of the Second Annual Conference
in early November;
- 5) announcement of the speakers, theme
and format for the Third Annual Conference
of the National Center, April 28-29, 1975
in New York City by the first of the new
year.

RETRENCHMENT CLAUSES IN COLLEGE CONTRACTS

The National Center has completed a study of retrenchment clauses as they presently exist in college contracts. Table I shows the number and breakdown of the higher education contracts studied.

TABLE I
NUMBER OF COLLEGE CONTRACTS WITH RETRENCHMENT CLAUSES

<u>Institution</u>	<u>Number with Retrenchment Clauses</u>	<u>Total Contracts</u>
Four-year	20 (25%)	43 (27%)
Two-year	60 (75%)	115 (73%)
Total	80 (100%)	158 (100%)

All of the two-year college contracts are at public colleges. The forty-three four-year college contracts are split almost evenly (23 public institutions and 20 private colleges and universities) as to the number of public and private institutions with contracts. Ten public four-year college and ten private four-year college contracts contained retrenchment clauses as shown in Table II.

TABLE II
PUBLIC/PRIVATE, TWO-YEAR, FOUR-YEAR BREAKDOWN

<u>Institution</u>	<u>Number of Retrenchment Clauses</u>	<u>Number of Contracts</u>
Four-year Public	10 (12.5%)	23 (15%)
Four-year Private	10 (12.5%)	20 (13%)
Two-year Public	60 (75%)	115 (72%)
Two-year Private	0	0
Total	80 (100%)	158 (100%)

Data by Agent

Table III shows the number of contracts with a re-trenchment clause and the affiliation of the bargaining agent that negotiated such a clause.

TABLE III
RETRENCHMENT CLAUSES BY AGENT AFFILIATION

<u>Agent</u>	<u>Contract with Clause</u>	<u>Total Contracts</u>
AAUP	7 (09%)	17 (11%)
AFT	19 (24%)	40 (25%)
NEA	32 (40%)	64 (41%)
NEA/AFT	12 (15%)	14 (9%)
Independent Agents	10 (12%)	23 (14%)
Total	80 (100%)	158 (100%)

Data by State-Region

Table IV gives the state-by-state distribution of the contracts that contain a retrenchment clause while Table V gives the same breakdown by region.

TABLE IV
RETRENCHMENT CLAUSES BY STATE RANKED BY NUMBER

<u>State</u>	<u>Retrenchment Clauses</u>	<u>Total Contracts</u>
New York	23 (29%)	38 (24%)
Michigan	21 (26%)	29 (18%)
Illinois	9 (11%)	14 (9%)
Pennsylvania	7 (9%)	12 (8%)
New Jersey	5 (6%)	14 (9%)
Washington	5 (6%)	13 (8%)
Rhode Island	4 (5%)	5 (3%)
Ohio	2 (3%)	2 (1%)
Kansas	1 (1%)	5 (3%)
Colorado	1 (1%)	2 (1%)
Massachusetts	1 (1%)	6 (4%)
Wisconsin	1 (1%)	12 (8%)
Other	0	6 (4%)
Total	80 (100%)	158 (100%)

TABLE V

RETRENCHMENT CLAUSES BY REGION

Region	Retrenchment Clauses	Total Contracts
Northeast	40 (50%)	79 (50%)
Mid-west	34 (43%)	64 (40%)
Far West	15 (17%)	15 (10%)
Total	80 (100%)	158 (100%)

One can see that the percentage of colleges with retrenchment clauses is roughly the same as of ratio of four-year to two-year colleges with contracts overall (Table I). Whether the college is public or private does not seem to make any difference either (Table IV). In general, who the agent was affiliated with did not seem to matter with the exception of the merged group in New York State (Table III). Location by region (Table V) was consistent but when the number of retrenchment clauses in contracts were compared with the number of contracts within the state (Table IV) data in a slightly different form) a different pattern emerged.

TABLE VI

RETRENCHMENT CLAUSES BY STATE RANKED BY PERCENTAGE WITHIN STATE

State	Percentage	Region
Ohio	100 (2/2)	Mid-West
Rhode Island	80 (4/5)	East
Michigan	72 (21/29)	Mid-West
Illinois	64 (9/14)	Mid-West
New York	61 (23/38)	East
Pennsylvania	58 (7/12)	East
Colorado	50 (1/2)	West
Washington	38 (5/13)	West
New Jersey	36 (5/14)	East
Kansas	20 (1/5)	Mid-West
Massachusetts	17 (1/6)	East
Wisconsin	8 (1/12)	Mid-West
Others	0 (0/6)	Various

Although the Northeast has fifty percent of the college contracts and fifty percent of the retrenchment clauses (Table V), Massachusetts has only one of six contracts with a retrenchment clause (17%) while Rhode Island has four out of five (80%). The Mid-West with forty percent of the contracts and forty-three percent of the retrenchment clauses varies within the region from Ohio (100%) and Michigan (27%) to Wisconsin (8%).

Many college contract clauses borrow heavily from the "1968 Recommended Institutional Regulations on Academic Freedom and Tenure," the "Statement on Procedural Standards in the Renewal or Non-Renewal of Faculty Appointment," "The Standards for Notice of Non-reappointments" of the AAUP and the 1971 statement on "Academic Staff Reductions in Response to Financial Exigency" of the Association of American Colleges. Although these statements may form a basis for a given retrenchment clause, it is important to remember that an individual contract clause will of necessity reflect the specific needs of a given college and its bargaining agent.

Criteria Cited Seven criteria which could be used to determine the need for retrenchment: 1) consistently declining student credit hour production; 2) academically sound student/faculty ratio; 3) the state of development within a department (program, Institute, School, etc.); 4) balance between academic and non-academic personnel; 5) possibilities of enrollment trend reversals; 6) the necessity of some disciplines and programs to be other than self-supporting; and 7) normal attrition were drawn from the various clauses. Most often, a clause would state that retrenchment could result for financial reasons, program curtailment, and/or a decrease in student enrollment. The burden of proof in a retrenchment situation is usually the college administration's responsibility.

Questions Raised Who determines when and how a financial exigency exists? What steps must be taken to economize before staff reductions take place? How much faculty or bargaining agent input is permitted or encouraged? Can these decisions be arbitrated under a given contract? If retrenchment decisions can be arbitrated, what has happened when they were processed as grievances? Many other questions quickly come to mind. The contract clauses are usually general enough in language so that definitive answers can be gained only by talking with people who are living under a specific contract to ascertain how the contract is interpreted and implemented.

Seniority The seniority situation in retrenchment clauses serves as a prime example of this situation. Seniority is listed as the determining factor considered in retrenchment situations. It is not necessarily clear from contract language how seniority is limited. Is it department seniority? School or division seniority? Campus-wide? College-wide?

University-wide? Contracts that are silent about the range of seniority present one kind of problem. Another interpretation problem is raised by language which says that seniority shall be one of the criteria used in making retrenchment decisions or that seniority, with due regard for the mission of the college, shall be controlling. Table VII shows the frequency of seniority used as retention criterion.

TABLE VII
SENIORITY AS RETENTION CRITERION IN COLLEGE CLAUSES

<u>Institution</u>	<u>Retrenchment Clause</u>	<u>Seniority</u>	<u>Seniority Plus¹</u>	<u>Seniority Minus²</u>	<u>No Criterion Mentioned</u>
4-Year	20	11	5	2	2
2-Year	60	34	10	4	12
Total	80	45	15	6	14

¹Seniority is a factor but the mission of the college, professional competence, regard for the academic program, continuation of certain programs, etc., must also be given some weight in lay-off or retrenchment decisions.

²a. One 4-year clause used seniority when practical and another considered seniority but "worth" was controlling.

b. One 2-year clause specifically limited seniority to subject matter; one used seniority only if the department could function; one used seniority for non-tenured and academic merit for tenured; and one clause said the qualified should be retained first and then seniority should be considered.

Caveat The National Center recognizes that the category assignments for Table VII are based solely on the reading of contract language and do not reflect how that language is interpreted and administered. To the extent that practice differs from our interpretation of the contract clauses, then these figures will lose accuracy.

Transfer Fifteen of the twenty four-year contracts with retrenchment clauses made reference to attempts to transfer or relocate faculty members before they were laid off. One clause required a written statement that a fiscal exigency was responsible for the termination but four others were silent about this respect. Only fourteen of the two-year college clauses mentioned relocation or transfer efforts. The limited opportunity for transfers at most two-year locations may explain this.

Recall List Seventeen of the four-year college contracts set up recall lists of varying lengths as shown in Table VIII.

TABLE VIII

DURATION OF RECALL LISTS IN FOUR-YEAR CONTRACTS

	<u>One Year</u>	<u>Two Years</u>	<u>Three Years</u>	<u>Five Years</u>	<u>No Recall List Mentioned</u>
Number of Contracts	2	9	5*	1	3

*One clause provided a three-year recall list for those with five or more years of service at the college and two years for those with less than five years service.

Thirty-nine of the sixty two-year clauses have recall provisions.

TABLE IX

DURATION OF RECALL LISTS IN TWO-YEAR CONTRACTS

	<u>One Year</u>	<u>Two Years</u>	<u>Three Years</u>	<u>Five Years</u>	<u>Unclear*</u>	<u>No Recall List Mentioned</u>
Number of Contracts	1	17	6	1	14	21

*These contracts specifically referred to a recall list but they did not give any duration information.

Notice Seven of the twenty four-year contracts with re-trenchment clauses did not specify any length of notice to faculty affected by a retrenchment decision. Eight contracts provided for six months notice or less. Three gave a year's notice to tenured personnel. Three others gave no specific notice provision but stated that the longer a person was associated with the college, the longer the notice would be. Four of the contracts provided longer notice for tenured faculty as compared to non-tenured faculty.

Thirty-seven of the sixty two-year college retrenchment clauses did not detail any minimum notice provision for faculty.

Eight gave a notice provision in length (1--two months, 2--three months, 1--four months, 1--six months, and 3--one year). Fourteen others gave notice by a certain date usually the first or fifteenth of a particular month (Dec. 1, Feb. 3, Mar. 4, April 3, May 2, June 1). Two of these contracts called for notice as soon as possible.

One may anticipate continuing efforts by faculty unions to negotiate retrenchment provisions. Depending upon the local conditions (relations between the administration and the union, the job market, etc.) these clauses may become increasingly specific. As college administrators attempt to retain flexibility they will run headlong into the job security concerns of the faculty. Continuing good-faith efforts will be required not only at the bargaining table but more particularly when these retrenchment clauses are implemented. An ever increasing number of grievances and arbitration cases will undoubtedly be tried in this sensitive area.

NON-DISCRIMINATION CLAUSE DATA

The National Center has recently completed a study of forty four-year and 108 two-year college contracts with regard to the presence and scope of a non-discrimination clause. Alleged cases of discrimination based on race, color, religion, sex and national origin by colleges and universities have fallen under the scrutiny of the Federal Government. The Equal Employment Opportunity Commission is estimated to have a backlog of some 60,000 cases, 500 of which involve higher education.

This survey, like its predecessors in the Newsletter, poses no hypothesis. It attempts only to discover what the various higher education contracts say with regard to a non-discrimination clause.

Table I shows how many contracts 1) had a specific non-discrimination clause, 2) made some mention of non-discrimination briefly in some part of the contract, and 3) how many agreements were silent in this respect.

TABLE I
NUMBER OF CONTRACTS BY CATEGORY

Type of Instruction	Non-Discrimination Clause	Non-Discrimination Reference	No Mention	Total
Four-year	28 (70%)	5 (12.5%)	7 (17.5%)	40
Two-year	60 (55.5%)	14 (12.9%)	34 (31.4%)	108
Total	88 (59.4%)	19 (12.8%)	41 (27.7%)	148

More than 80% of the four-year and 72% of the two-year contracts, therefore, either have a specific clause or make reference to non-discrimination.

Four-year
Specifics

Table II summarizes the basis of discrimination specified in the four-year college contract clauses.

TABLE II

FOUR-YEAR COLLEGE NON-DISCRIMINATION CLAUSE SPECIFICS

Race	28 (100%)
Religion/Creed	28 (100%)
National Origin (ancestry, Citizenship)	28 (100%)
Sex	27 (96%)
Color	23 (82%)
Age	18 (64%)
Union Membership	17 (61%)
Family/Marital Status	15 (53%)
Political Belief/Affiliation	6 (21%)

Two-Year
Specifics

The two-year college clauses provided a similar general pattern with the exception of the family/marital status issue which received considerable more attention in the two-year contracts although the other percentages do vary especially in the Age, Union Membership, and Political Belief/Affiliation categories. Three of the two-year college contracts contained a general non-discrimination clause which mentioned no given type of non-discriminatory activity.

TABLE III
TWO-YEAR COLLEGE NON-DISCRIMINATION CLAUSE SPECIFICS

Race	57 (95%)
Religion/Creed	57 (95%)
National Origin	57 (95%)
Sex	57 (95%)
Color	50 (83%)
Family Marital Status	44 (73%)
Age	31 (50%)
Union Membership	21 (35%)
Political Belief/Affiliation	20 (33%)

Actual Wording

Some contract clauses are relatively simply stated:

Neither the Board nor the Union shall discriminate against any faculty member on the basis of race, creed, color, sex, or national origin.

Other clauses are more detailed:

- A. Neither party hereto nor any faculty member shall discriminate against any other faculty member or candidate for employment on the basis of race, creed, color, sex, family status, age, national origin, union membership or activity or lack thereof, or political belief and/or affiliation.
- B. There shall be no discrimination by either of the parties hereto or any faculty member against members of the same family regarding concurrent employment at any college; provided, however, that none of the colleges shall be required to appoint them in the same department.

Unique Aspects One contract creates a faculty women's opportunity committee that is charged with the responsibility to study the opportunities for women at the university and to make recommendations for improvement. One or two other contracts mention dress or appearance, physical handicaps, or sexual orientation as areas of specific protection under the non-discrimination clause.

Political Belief The area of political belief or affiliation was specifically mentioned in a relatively small number of contracts. This may be because faculty members consider that area already protected broadly under the traditional concept of academic freedom.

Given the current interest in cases of sexual and racial discrimination, one may well expect future college contracts to continue to include non-discrimination clauses with references to certain specific areas of non-discrimination.

(There are no bibliographic references in this issue of the Newsletter.)